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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/801,540

03/17/2004

Glenn M. Houck

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EXAMINER

CUEVAS, PEDRO J

ART UNIT

PAPER NUMBER

2834

MAIL DATE

DELIVERY MODE

07/09/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/801,540	Applicant(s) HOUCK ET AL.	
	Examiner PEDRO J. CUEVAS	Art Unit 2834	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 April 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10 and 20-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10 and 20-22 is/are rejected.
- 7) ☒ Claim(s) 10 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed on April 4, 2008 have been fully considered but they are not persuasive.
2. In response to applicant's argument that "the Examiner's statement show clearly that Greer does not anticipate any of Claims 10, 20, 21 and 22.", the Examiner has clearly pointed out in this Office Action, the columns and lines in which Greer disclose the claimed limitations of Claims 10, 20, 21 and 22.
3. In response to applicant's argument that "another Examiner in applicant's USSN 10/926,027 earlier allowed Claims 10 and 20 in their present independent form and stated that what are now Claims 21 (independent) and 22 were allowable if place in independent form.", it must be noted that said arguments fails to comply with 37 CFR 1.111(b) because it amounts to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.
4. It should be emphasized that "apparatus claims must be structurally distinguishable from the prior art." MPEP 2114. *In re Danly*, 263 F. 2d 844, 847, 120 USPQ 528, 531 (CCPA 1959) it was held that apparatus claims must be distinguished from prior art in terms of structure rather than function. In *Hewlett-Packard Co. v Bausch & Lomb Inc.*, 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990), the court held that: "Apparatus claims cover what a device is, not what it does" (emphases in original). To emphasize the point further, the court added: "An invention need not operate differently than the prior art to be patentable, but need only be different" (emphases in original).

5. It has also been held that the recitation that an element is “capable of” performing a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138.

Claim Objections

6. Claim 10 is objected to because of the following informalities: the word “means” is missing from line 4, the characters “; for” at the end of line 6 seem to be a typographical mistake, and the word “frame” in line 8 is misspelled. Appropriate correction is required.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 10 and 20-22 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,682,649 to Greer.

Greer clearly teaches the construction of an auxiliary air conditioning, heating and engine warming system for trucks, comprising:

means (22) for heating and cooling the cab of a truck;

means (column 3, lines 37-43) for charging a battery in said truck;

generator means (32) for supplying electricity of normal ac voltage as is allowable for 60 Hertz application to means for heating and cooling cab of a truck and means for charging a battery in said truck; and

means (column 4, lines 1-21) to supply an alternative source of electricity;

wherein the generator means is contained in a single enclosure that is mounted on the frame of the truck, and said enclosure being located under a door of the cab of the truck (column 2, lines 33-38) and having a step appendage said system being capable of being used during powered mobile operation of the truck and is capable of being used for elimination of the need for idling the engine of the truck when the truck is not moving under motorized power.

9. With regards to claim 21, Greer disclose the generator means being powered by a diesel engine (Kubota® diesel engine or an equivalent engine – column 2, lines 39-41), the means for heating and cooling the cab of a truck is a unit capable of heating and cooling atmosphere in the cab of the truck and the means for charging a battery in said truck is a battery charger that is capable of maintaining the at least one battery of the truck, wherein the apparatus also provides electricity to an immersion engine block heater of the truck, and flow of the electricity to the immersion engine block heater of the truck is controlled by an on-off block heater switch located on a remote control panel (column 5, lines 34-41).

10. With regards to claim 22, Greer disclose “the conventional electrical system of the truck” (column 5, lines 19-33). It is well known in the art that the conventional electrical system of a truck includes a plurality of breaker boxes in electrical connection between power sources (i.e., batteries or generators) and electrical devices (i.e., switches, lights, motors and heating elements). Said breaker boxes are necessary to protect the electrical system from electrical faults.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892.

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PEDRO J. CUEVAS whose telephone number is (571)272-2021. The examiner can normally be reached on M-F from 8:30 - 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Darren E. Schuberg can be reached on (571) 272-2044. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Pedro J. Cuevas/
Examiner, Art Unit 2834
July 9, 2008